

2018 Kentucky Senate Bill No. 5, Kentucky 2018 Regular Session

KENTUCKY BILL TEXT

**TITLE: AN ACT relating to pharmacy benefits in the Medicaid program.**

VERSION: Adopted

April 13, 2018

M. Wise



Image 1 within document in PDF format.

**SUMMARY:** Create a new section of KRS Chapter 205 to require the Department for Medicaid Services to directly administer all outpatient pharmacy benefits; prohibit renewal or negotiation of new contracts to provide Medicaid managed care that allow administration of outpatient benefits by any entity but the Department for Medicaid Services; reduce costs of future Medicaid managed care contracts by costs of all outpatient pharmacy benefits as they existed on January 1, 2017; allow the department to utilize managed care principles and techniques to assist with member medication adherence and cost control; require the department to establish a reasonable dispensing fee pursuant to Centers for Medicare and Medicaid Services guidelines; **EFFECTIVE** January 1, 2019.

**TEXT:**

AN ACT relating to pharmacy benefits in the Medicaid program, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. [KRS 205.647](#) is amended to read as follows:

- (1) As used in this section, "pharmacy benefit manager" has the same meaning as in KRS 304.9-020.
- (2) A pharmacy benefit manager contracted with a managed care organization that provides Medicaid benefits pursuant to this chapter shall comply with the provisions of this section and KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162.
- (3) KRS 304.17A-162(10), (11), (12), and (13) shall not apply to a pharmacy benefit manager contracted directly with the cabinet to provide Medicaid benefits.
- (4) A pharmacy benefit manager contracting with a managed care organization to administer Medicaid benefits shall provide the following information to the Department for Medicaid Services no later than August 15, 2018, and for each year thereafter that the pharmacy benefit manager is contracted with a managed care organization to administer Medicaid benefits:**
  - (a) The total Medicaid dollars paid to the pharmacy benefit manager by a managed care organization and the total amount of Medicaid dollars paid to the pharmacy benefit manager by a managed care organization which were not subsequently paid to a pharmacy licensed in Kentucky;**

**(b) 1. The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefit manager to licensed pharmacies with which the pharmacy benefit manager shares common ownership, management, or control; or which are owned, managed, or controlled by any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company; or which share any common members on the board of directors; or which share managers in common.**

**2. For the purposes of this subsection "average reimbursement" means a statistical methodology selected by the Department for Medicaid Services via any administrative regulations promulgated pursuant to this section which shall include, at a minimum, the median and mean;**

**(c) The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee, paid by a pharmacy benefit manager to pharmacies licensed in Kentucky which operate more than ten (10) locations;**

**(d) The average reimbursement by drug ingredient cost, dispensing fee, and any other fee, paid by a pharmacy benefit manager to pharmacies licensed in Kentucky which operate ten (10) or fewer locations;**

**(e) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky with which the pharmacy benefit manager shares common ownership, management, or control; or which are owned, managed, or controlled by any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company; or which share any common members on the board of directors; or which share managers in common;**

**(f) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky which operate more than ten (10) locations;**

**(g) Any direct or indirect fees, charges, or any kind of assessments imposed by the pharmacy benefit manager on pharmacies licensed in Kentucky which operate ten (10) or fewer locations; and**

**(h) All common ownership, management, common members of a board of directors, shared managers, or control of a pharmacy benefit manager, or any of the pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company with any managed care organization contracted to administer Kentucky Medicaid benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy services administration organization, or any common ownership, management, common members of a board of directors, shared managers, or control of a pharmacy services administration organization that is contracted with a pharmacy benefit manager, with any drug wholesaler or distributor or any of the pharmacy services administration organizations, management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, common members of a board of directors, manager, or holding company.**

**(5) All information provided by a pharmacy benefit manager pursuant to subsection (4) of this section shall reflect data for the most recent full calendar year and shall be divided by month. This information shall be managed by the Department for Medicaid Services in accordance with applicable law and shall be exempt from KRS 61.870 to 61.884 in accordance with KRS 61.878(1)(c).**

**(6) Any contract entered into or renewed for the delivery of Medicaid services by a managed care organization on or after the effective date of this Act shall comply with the following requirements:**

**(a) The Department for Medicaid Services shall set, create, or approve, and may change at any time for any reason, reimbursement rates between a pharmacy benefit manager and a contracted pharmacy, or an entity which contracts on**

behalf of a pharmacy. Reimbursement rates shall include dispensing fees which take into account applicable guidance by the Center for Medicare and Medicaid Services. A pharmacy benefit manager shall notify the Department for Medicaid Services thirty (30) days in advance of any proposed change of over five percent (5%) in the product reimbursement rates for a pharmacy licensed in Kentucky. The Department for Medicaid Services may disallow the change within thirty (30) days of this notification;

(b) All laws and administrative regulations promulgated by the Department for Medicaid Services, including but not limited to the regulation of maximum allowable costs;

(c) The Department for Medicaid Services shall approve any contract between the managed care organization and a pharmacy benefit manager;

(d) The Department for Medicaid Services shall approve any contract, any change in the terms of a contract, or suspension or termination of a contract between a pharmacy benefit manager contracted with a managed care organization to administer Medicaid benefits and an entity which contracts on behalf of a pharmacy, or any contract or any change in the terms of a contract, or any suspension or termination of a contract between a pharmacy benefit manager and a pharmacy or pharmacist; and

(e) Any fee established, modified, or implemented directly or indirectly by a managed care organization, pharmacy benefit manager, or entity which contracts on behalf of a pharmacy that is directly or indirectly charged to, passed onto, or required to be paid by a pharmacy services administration organization, pharmacy, or Medicaid recipient shall be submitted to the Department for Medicaid Services for approval. This paragraph shall not apply to any membership fee or service fee established, modified, or implemented by a pharmacy services administration organization on a pharmacy licensed in Kentucky that is not directly or indirectly related to product reimbursement.

(7) The Department for Medicaid Services may promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and administer its responsibilities under this section. These administrative regulations may include, but are not limited to the assessment of fines, or sanctions for noncompliance.

(8) The Department for Medicaid Services may consider any information ascertained pursuant to this section in the setting, creation, or approval of reimbursement rates used by a pharmacy benefit manager or an entity which contracts on behalf of a pharmacy.

Section 2. [KRS 304.9-440](#) is amended to read as follows:

(1) The commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, life settlement broker, or life settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance or the business of life settlements;

- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, life settlement contract, or application for insurance;
- (f) Having been convicted of or having pled guilty or nolo contendere to any felony;
- (g) Having admitted or been found to have committed any unfair insurance trade practice, insurance fraud, or fraudulent life settlement act;
- (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
- (i) Having an insurance license, life settlement license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
- (k) Forging another's name to an application for insurance, to any other document related to an insurance transaction, or to any document related to the business of life settlements;
- (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
- (m) Knowingly accepting insurance or life settlement business from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;
- (n) Failing to comply with an administrative or court order imposing a child support obligation;
- (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
- (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude;
- (q) Failing to no longer meet the requirements for initial licensure;
- (r) If a life settlement provider, demonstrating a pattern of unreasonable payments to owners or failing to honor contractual obligations set out in a life settlement contract;
- (s) Entering into any life settlement contract or using any form that has not been approved pursuant to Subtitle 15 of this chapter;
- (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(u) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.

(2) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the commissioner finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the Department of Insurance nor corrective action taken.

**(3) The license of a pharmacy benefit manager may, in the discretion of the commissioner, be suspended, revoked, or refused for any cause enumerated in subsection (1) of this section, and for violations of Section 1 of this Act, KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. The pharmacy benefit manager shall also be subject to the same civil penalties under KRS 304.99-020 as an insurer.**

(4) The applicant or licensee may make written request for a hearing in accordance with KRS 304.2-310.

**(5)(4)** The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.

**(6)(5)** The commissioner may suspend, revoke, or refuse to renew the license of a licensed insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700, if the commissioner finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.

**(7)(6)** If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement broker, or suspends, revokes, or refuses to renew the license of a licensed life insurance agent operating as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall comply with the provisions of this section and KRS Chapter 13B.

Section 3. Whereas there is an urgent need for government agencies to have transparency and to better assess contracts between entities providing Medicaid pharmacy benefits with public dollars, an emergency is declared to exist, and this Act takes effect on July 1, 2018.

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